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No. 46

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

JAMES E. PEURIFOY, PAUL V. STINES AND BETTY O. STINES, JOHN S. HALL AND DORIS D. HALL,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF FOR PETITIONERS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 910

JAMES E. PEURIFOY, PAUL V. STINES AND BETTY O. STINES, JOHN S. HALL AND DORIS D. HALL,
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REPLY BRIEF FOR PETITIONERS

ARGUMENT

Respondent concedes that the decision below rests on the doctrine that "the place of taxpayer's *indefinite* employment is a 'home' under Section 23(a)(1)(A)" of the Internal Revenue Code of 1939. (Brief for Resp., p. 6). Respondent then argues the case below

is not in conflict with the case of *Wallace* v. *Commissioner*, 144 F. 2d 407, for the reason the *Wallace* case involved "temporary" employment.

It is submitted that the case below *is* in conflict with the *Wallace* decision. In the decision below the doctrine that the "place of employment is the home of the taxpayer", or, if respondent prefers, that "the place of *indefinite* employment is the 'home' of the taxpayer" is treated as a rule of substantive law. The *Wallace* decision clearly rejected the concept that "a place of employment, indefinite or otherwise, is deemed to be the 'home' of the taxpayer" as a matter of substantive law. Respondent cites *Barnhill* v. *Commissioner*, 148 F. 2d 913 (4th Cir. 1945) in support of its position that there is no conflict in the case below and the *Wallace* decision when this Court has itself said that the *Barnhill* case is in conflict with the *Wallace* decision. (Brief for Resp., p. 7).

Respondent dismisses petitioners' arguments that the decision below is in conflict with the decision of this Court rendered in *Commissioner* v. *Flowers*, 326 U.S. 465, by stating such arguments are "patently without merit". Respondent then adds, "In *Flowers* this Court (p. 472) expressly refrained from deciding the meaning of 'home' in Section 23(a)(1)(A)". (Brief for Resp., pp. 7-8).

Respondent's argument overlooks the fact that *it was the court below that cited the Flowers case in support of its conclusion.* A correct statement of what respondent is inadvertently saying is that the court below was *not* justified in citing the *Flowers* case in support of its conclusion for the reason that the *Flowers* case expressly refrained from deciding the meaning of "home" in Section 23(a)(1)(A), and that, accord-

ingly, the action of the court below is patently without merit to the extent it relied on the *Flowers* case in reaching its decision.

It is difficult to conceive of a more eloquent admission of the fact that the court below improperly applied the *Flowers* decision than that which respondent has made in this instance.

CONCLUSION

It is respectfully submitted that the respondent's arguments in opposition to the petition for a writ of certiorari are without merit and that the petition should be granted.

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